AMENDMENTS TO THE CLAIMS:

Claims 1-6 (Canceled)

7. (Currently amended) A positive active material comprising:

a composite oxide which comprises ~~is constituted of at least~~ lithium (Li), manganese (Mn), nickel (Ni), cobalt (Co), and oxygen (O) and is represented by the following chemical composition formula:

$Li_aMn_bNi_cCo_dO_e$ (Chemical composition formula 1)

[[()]]wherein $0<a\leq 1.3$

$|b-c|\leq 0.05$

$0.6\leq d<1$

$1.7\leq e\leq 2.3$

$b+c+d=1$[[)]], and

wherein said composite oxide comprises an oxide which is other than $LiMn_{0.05}Ni_{0.05}Co_{0.9}O_2$, and $b\neq 0.1$.

8. (Currently amended) A positive active material comprising:

a composite oxide which comprises ~~is constituted of at least~~ lithium (Li), manganese (Mn), nickel (Ni), cobalt (Co), and oxygen (O) and is represented by the following chemical composition formula:

$Li_aMn_bNi_cCo_dO_e$ (Chemical composition formula 1)

[[()]wherein $0<a\leq 1.3$

$|b-c|<0.03$

$0.8\leq d<1$

$1.7\leq e\leq 2.3$

$b+c+d=1$[[)]], and

wherein said composite oxide comprises an oxide which is other than $LiMn_{0.05}Ni_{0.05}Co_{0.9}O_2$, and $b \neq 0.1$.

9. (Currently amended) A non-aqueous electrolyte battery, comprising: ~~having~~

a positive electrode including ~~containing~~ the positive active material of claim 7; [[,]]

a negative electrode; [[,]] and

a non-aqueous electrolyte.

10. (Currently amended) A non-aqueous electrolyte battery, comprising: ~~having~~

a positive electrode including ~~containing~~ the positive active material of claim 8; [[,]]

a negative electrode; [[,]] and

a non-aqueous electrolyte.

11. (Currently amended) A non-aqueous electrolyte battery, comprising: ~~having~~

a positive electrode, a negative electrode, and a non-aqueous electrolyte, ~~characterized in that~~

wherein the positive electrode comprises ~~contains~~ a lithium-manganese oxide (A) having a spinel structure and represented by the general formula $LiMn_2O_4$ and a lithium-nickel-manganese-cobalt composite oxide (B) having an α-$NaFeO_2$ ~~type~~ layer structure and represented by the general formula $Li_aMn_bNi_cCo_dO_e$,

wherein a weight ratio of (A) to (B) is in a range from 5:95 to 10:90, and

wherein

$0<a\leq 1.3$

$|b-c|\leq 0.05$

$0.6\leq d<1$

$1.7\leq e\leq 2.3$

$b+c+d=1$.

12. (Currently amended) A non-aqueous electrolyte battery, comprising: ~~having~~

a positive electrode, a negative electrode, and a non-aqueous electrolyte, ~~characterized in that~~

wherein the positive electrode comprises ~~contains~~ a lithium-manganese oxide (A) having a spinel structure and represented by the general formula $LiMn_2O_4$ and a lithium-nickel-manganese-cobalt composite oxide (B) having an α-$NaFeO_2$ ~~type~~ layer structure and represented by the general formula $Li_aMn_bNi_cCo_dO_e$,

wherein a weight ratio of (A) to (B) is in a range from 5:95 to 10:90, and

wherein

$0<a\leq 1.3$

$|b-c|<0.03$

$0.8\leq d<1$

$1.7\leq e\leq 2.3$

$b+c+d=1$.

13. (Currently amended) The non-aqueous electrolyte battery of claim 19 ~~11~~, wherein ~~characterized in that~~ the positive electrode includes ~~contains the~~ (A) and the (B) in a proportion (weight ratio ~~ration~~) of from 5:95 to 90:10.

14. (Currently amended) The non-aqueous electrolyte battery of claim 20 ~~12~~, wherein ~~characterized in that~~ the positive electrode includes ~~contains the~~ (A) and the (B) in a proportion (weight ratio ~~ration~~) of from 5:95 to 90:10.

15. (New) A positive active material comprising:

a composite oxide which comprises lithium (Li), manganese (Mn), nickel (Ni), cobalt (Co), and oxygen (O) and is represented by the following chemical composition formula:

$Li_aMn_bNi_cCo_dO_e$ (Chemical composition formula 1)

wherein $0<a\leq 1.3$

$|b-c| \leq 0.05$

$0.6 \leq d \leq 0.833$

$1.7 \leq e \leq 2.3$

$b+c+d=1$, and

$b \neq 0.1$.

16. (New) A positive active material comprising:

a composite oxide which comprises lithium (Li), manganese (Mn), nickel (Ni), cobalt (Co), and oxygen (O) and is represented by the following chemical composition formula:

$Li_aMn_bNi_cCo_dO_e$ (Chemical composition formula 1)

wherein $0<a \leq 1.3$

$|b-c|<0.03$

$0.8 \leq d \leq 0.833$

$1.7 \leq e \leq 2.3$

$b+c+d=1$, and

$b \neq 0.1$.

17. (New) A non-aqueous electrolyte battery, comprising:

a positive electrode including the positive active material of claim 15;

a negative electrode; and

a non-aqueous electrolyte.

18. (Currently amended) A non-aqueous electrolyte battery, comprising:

a positive electrode including the positive active material of claim 16;

a negative electrode; and

a non-aqueous electrolyte.

19. (New) A non-aqueous electrolyte battery, comprising:

a positive electrode, a negative electrode, and a non-aqueous electrolyte,

wherein the positive electrode comprises a lithium-manganese oxide (A) having a spinel structure and represented by the general formula $LiMn_2O_4$ and a lithium-nickel-manganese-cobalt composite oxide (B) having an α-$NaFeO_2$ layer structure and represented by the general formula $Li_aMn_bNi_cCo_dO_e$,

wherein

$0<a\leq 1.3$

$|b-c|\leq 0.05$

$0.9\leq d<1$

$1.7\leq e\leq 2.3$

$b+c+d=1$

$b<0.05$.

20. (New) A non-aqueous electrolyte battery, comprising:

a positive electrode, a negative electrode, and a non-aqueous electrolyte,

wherein the positive electrode comprises a lithium-manganese oxide (A) having a spinel structure and represented by the general formula $LiMn_2O_4$ and a lithium-nickel-manganese-cobalt composite oxide (B) having an α-$NaFeO_2$ layer structure and represented by the general formula $Li_aMn_bNi_cCo_dO_e$,

wherein

$0<a\leq 1.3$

$|b-c|<0.03$

$0.9\leq d<1$

$1.7\leq e\leq 2.3$

$b+c+d=1$

$b<0.05$.